UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/C.12/1993/SR.35
21 February 1995

ENGLISH
Original: FRENCH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 35th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 November 1993, at 3 a.m.

Chairperson: Mr. ALSTON

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GE.93-19717 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Mexico concerning rights covered by articles 1 to 15 (continued) (HRI/CORE/1/Add.12; E/1990/6/Add.4; E/C.12/1993/WP.16)

1. The CHAIRPERSON said that it only remained for the Committee to thank the Mexican delegation for its collaboration and to inform it that it would shortly receive the final written comments of the Committee on the dialogue that had taken place.

2. Mr. ALVAREZ VITA protested that members had had no opportunity, contrary to what they had been told at the preceding meeting, to communicate their conclusions orally to the Mexican delegation. For his own part, he was still awaiting the answer to several very specific questions he had raised.

3. The CHAIRPERSON said he thought that there had been a misunderstanding. It was not customary for the members of the Committee to make final comments on an individual basis at the end of the consideration of the report of a State party. In closed session, the Committee drafted its final comments, which were adopted by consensus and addressed in writing to the delegation. Past experience had led the Committee to avoid the practice whereby individual members orally formulated conclusions in the presence of the delegation so as to avoid prejudging the final comments which the Committee had to formulate in writing. The Mexican delegation would receive the final comments within a period of 10 days.

4. The Mexican delegation withdrew.

Second periodic report of Germany concerning rights covered by articles 13 to 15 (E/1990/7/Add.12; E/C.12/1993/WP.6)

5. At the invitation of the Chairperson, Mr. Jelonek, Mr. Meyer-Ladewig, Mr. Siegele, Mr. Sasdrich, Mr. Daum, Mr. Ohndorf, Mr. Schemel, Mr. Felsner, and Mr. von Trützschler (Germany) took seats at the Committee table.

6. Mr. SASDRICH (Germany), introducing the second report of Germany (E/1990/7/Add.12) concerning rights covered by articles 13 to 15 of the Covenant, recalled that, since the submission of the initial report in 1982, major events had occurred in Germany. The disturbing increase in politically motivated violence in recent years had alarmed politicians and broad sectors of the German population. As a result action to combat racism, xenophobia and intolerance had taken on special importance.

7. Since article 13 of the Covenant underlined the role of education in promoting understanding, tolerance and friendship among all nations, the Committee had every right to ask for information about steps taken by the German Government to counter the violence against foreigners, which had assumed disquieting proportions in the past months. The Federal Government

had launched an action programme within the framework of which it had released funds amounting to DM 70 million in 1992 alone for the establishment of new youth facilities, especially in social problem regions. Four working groups had been set up to deal with the following issues: information campaigns against extremism; youth welfare work and education; integration of foreigners and social coexistence of Germans and foreigners; police, protection of the Constitution and internal security; and criminal and procedural law. So far, the Federal Government had presented two interim reports on the results of its initiatives.

8. A working group had been entrusted with coordinating the many initiatives in the various Länder and at the federal level within the framework of the information campaign against extremism and xenophobia. In its final report submitted in April 1993, the working group had proposed some concrete measures in the educational field.

9. The police and the judiciary had acted decisively and consistently by taking preventive and repressive measures. The number of crimes committed in 1993 indicated, however, that further action was urgently required. Action to combat xenophobia and violence could not be taken by the police and the judiciary alone; it was a task for society as a whole and, in particular, for parents, teachers and youth welfare authorities, as well as for various clubs and associations and for the churches. Local and regional agencies could also do useful work. Successful examples were the "regional agencies for foreigners", which promoted cooperation between schools and as an extracurricular facility, offering German and, above all, foreign youth a place where they could talk about their problems, as well as concrete support in making a smooth transition from school to working life. The information media, too, had participated in many initiatives aimed at promoting peaceful and tolerant coexistence among all those living in Germany. Citizens had shown remarkable solidarity with the victims of xenophobic crimes.

10. The fact that some 70 per cent of those arrested in 1992 on suspicion of a xenophobia-related crime had been under 20 years of age and 85 per cent of all suspects had been under 24 showed that it was among young people that information efforts aimed at preventing prejudice, envy, intolerance and hatred were most necessary. Young people had to be made aware that extremist ideologies could not provide a solution to problems arising from uncertainty, frustration and fear of the future.

11. One of the most important objectives of Germany's policy in respect of foreigners was to ensure the integration of all, and especially of foreign workers and their families. The need for integration was made all the more necessary by the fact that half of the 6.5 million foreigners living in Germany had been there for over 10 years and that more than two-thirds of the children and adolescents of non-German nationality had been born in Germany. Most of them would remain in Germany for a considerable period of time or permanently. For them, integration was the only solution and many second and third-generation foreigners required special support because of linguistic and, in some cases, cultural difficulties which impeded their access to the German educational system. It was therefore in the area of training and education that efforts had been concentrated, especially at the level of the Länder, which had adopted special measures, including, for example, school

cultural events, partnerships with foreign schools and visits to hostels for asylum-seekers. School curricula had been extended to include lessons on the causes and consequences of migration, on human rights and on peace. Teachers were offered information, teaching materials and additional training in all those areas, as well as in the more general issue of violence among the young. Such support was aimed at making teachers more aware of those problems and of their attitudes towards foreign pupils.

12. The integration of foreign workers in German society was most advanced in the workplace. The trade unions were encouraging foreign nationals to assume responsibilities at the company level.

13. In order to avoid unnecessary tensions, the arrival of foreigners in German communities - for example, when large groups of asylum-seekers were allocated to a community - was generally preceded by information campaigns about the newcomers' origin and situation. The need to continue the efforts aimed at the integration of foreigners had been stressed by the Chancellor in a statement to the Bundestag. In 1992, the Federal Ministry of Labour and Social Affairs alone had spent some DM 92 million on programmes designed to facilitate the integration of foreign workers and their families and to improve the coexistence of Germans and foreigners, as well as on public relations work in that area. The Länder governments were also very active in that field. All the measures taken contributed towards enabling the Federal Republic of Germany to face up to the task of fighting racism, a responsibility it felt particularly strongly in view of its recent history. The vast majority of Germans were filled with shame and disgust by the acts of violence committed by right-wing extremists and the whole of society and the Government were determined to continue the struggle.

14. Germany's next periodic report, which would cover all three parts of the Covenant, was due in June 1994. Since the Committee had been obliged to postpone its consideration of the second report, only six months would be available for drafting the next report and it would not be possible to reflect the effects of a number of the measures taken. He therefore requested the Committee to defer consideration of Germany's next periodic report at least for one year and noted that the core document to be prepared in accordance with the guidelines of the Secretary-General would be ready by the end of 1993.

15. Mr. MEYER-LADEWIG (Germany) said that, under the German Constitution, human rights were directly enforceable. All State agencies - the legislature, the executive and the judiciary - were required to respect human rights. Many recourse procedures were available to persons who believed that their rights had been violated by the public authorities. As a last resort, such persons could appeal to the Federal Constitutional Court and, beyond that, could petition the European Commission and the European Court of Human Rights.

16. Victims of human rights violations could demand compensation. The State was liable for damages caused by breaches of official duty.

17. Basic rights in the educational sphere were guaranteed both by the Federal Constitution and by the constitutions of the Länder. Article 2.1 of the Basic Law guaranteed everyone the right to the free development of his

personality. Under article 12.1, all Germans had the right to free choice of occupation, place of work and place of study or training. All those rights were exercised without discrimination in accordance with article 3.1 of the Constitution, which provided for the equality of all human beings before the law.

18. Article 6 of the Basic Law imposed an obligation to respect the right of parents to bring up their children and article 7 placed the entire schooling system under State supervision. Freedom of art, science, research and teaching was guaranteed by article 5. No one could be excluded from participation in cultural life for financial reasons. It should be noted that the courts and, in particular, the Federal Constitutional Court had given concrete form to all the above basic rights in their decisions.

19. The commission set up to study constitutional reform had found that the right to equal access to educational and training institutions could be inferred from legal provisions already in force.

20. With regard to the incorporation of the provisions of the Covenant in German law, he explained that all State agencies were required to respect Germany's international obligations. Not all provisions of the Covenant had as yet been incorporated in internal law by Parliament, but provisions of the Covenant could be invoked before the courts because, as was shown by the case-law of the Federal Constitutional Court, German domestic legislation had to be interpreted as being in conformity with international law.

21. Mr. von TRÜTZSCHLER (Germany), referring to the question of the integration of teaching staff of the former German Democratic Republic, said that such integration had taken place in accordance with the provisions of the Reunification Treaty. In Thuringia, for example, commissions composed of representatives of the public and members of the staffs of teaching and research establishments had been set up in order to determine, on the one hand, whether the teachers concerned had violated any basic human rights, particularly the right to freedom of opinion and of expression, and, on the other hand, whether they possessed the qualifications required in order to perform their duties. Only about 5 per cent of teaching staff had been dismissed as a result of those evaluations. The individuals concerned had had the possibility to bring an appeal against the decision before a conciliation tribunal. An evaluation procedure of that kind had been necessary in so far as members of the civil service undertook to respect the Constitution when exercising their duties.

22. The CHAIRPERSON invited the members of the Committee to ask questions in connection with the information just supplied by the German delegation.

23. Mr. GRISSA said that his first question was whether the sharp increase in xenophobic acts had not been the result of the way in which the reunification had taken place.

24. Secondly, he could not understand why the new German authorities were being so hard on teachers and on them alone. After all, those persons probably had not "collaborated" with the East German regime more than other sectors of the population. Besides, had they really had any choice?

25. In conclusion, he urged the German authorities to forget the past and look to the future.

26. Mr. SASDRICH (Germany) said that reunification had taken place on the basis of full respect for international law and without coercion of any kind. The evaluation procedures mentioned earlier had been introduced on the basis of full respect for the rules of a constitutional State and had nothing to do with any spirit of revenge.

27. In the German Democratic Republic, parents had had no possibility of sending their children to the school of their choice and teachers had been obliged to advocate the official doctrine. The sole purpose of the evaluation procedures was to check that teachers in the reunified Germany fully subscribed to the principles embodied in the Constitution.

28. Mr. WIMER ZAMBRANO asked what steps the Government had taken to curb the rise of xenophobia.

29. Did Germany, like some other European countries, intend to limit jus soli by placing restrictions on the rights of children born in Germany of non-German parents?

30. Mr. MEYER-LADEWIG (Germany) indicated that, in matters of nationality, Germany followed the same practice as most other countries: children born of German parents were German, whereas children born of foreign parents who had lived for a certain amount of time in Germany had dual nationality, German and that of their parents. It had been found that most foreigners did not renounce their nationality of origin in order to become Germans. The authorities had therefore decided to grant German nationality to children born in Germany of foreign parents who fulfilled the conditions required for that purpose, with a view to avoiding the continual practical problems that inevitably arose from the fact of being a foreigner on German soil. The dual-nationality solution was probably shaky, since it often created, for the person who possessed dual nationality, difficulties with his country of origin, although in some cases, such as that of Turkish children, it facilitated the integration of children without breaking their links with the country of their parents.

31. The CHAIRPERSON invited the participants to stay within the framework of the rights dealt with in articles 13 to 15.

32. Mr. WIMER ZAMBRANO said that he was not sure that he had correctly understood the explanations given by the representative of Germany. Would children born of non-German parents, such as Turkish children, be considered in law as being German and would they not have the right to opt for another nationality?

33. Mr. MEYER-LADEWIG (Germany) explained that a child whose two parents were foreigners, but lived in Germany, had, at birth, the nationality of its parents and, if the parents had resided in Germany for a certain period of time, it had the right to opt formally, in due course, for German nationality.

34. Mrs. BONOAN-DANDAN noted that, in order to combat racism and xenophobia, provision was made in German school curricula for dealing with matters such as peace, the causes and consequences of migration, and human rights. She would like to know whether such teaching also extended to economic, social and cultural rights, a point that was raised in issue 11 of the list which had been sent to the German authorities. She also asked what had been done to make the general public aware of those rights. Had the Covenant been translated into the languages spoken in Germany? What publicity had been given to Germany's second periodic report on the implementation of the rights dealt with in articles 13 to 15? Had non-governmental organizations been invited to participate in its drafting and had they done so? Had the text of the report been widely circulated, possibly in the form of a brochure? She would also like to know the German Government's position on the subject of the preparation of an optional protocol to the International Covenant on Economic, Social and Cultural Rights. Was it for or against that idea, and why?

35. Mr. RATTRAY noted that the German delegation had confined itself to dealing with those issues raised in the list (E/C.12/1993/WP.6) that were concerned with the general legal framework for the protection of human rights and asked whether it intended to provide, later on, specific information on the remaining issues, namely, issues 5 to 16. It would probably be better for the German delegation to take up those issues immediately so that the Committee could then request any further information. He reserved the right to revert to Germany's report when the Chairperson had settled that procedural question.

36. The CHAIRPERSON asked the German delegation whether it considered that it had already dealt with all the issues in the list or whether it intended to return to some of them; he explained that the list was an important component in the dialogue between the State party and the Committee and that the latter had to make sure that all issues had been correctly dealt with.

37. Mr. SASDRICH (Germany) said that it was up to the Committee to decide on the procedure to be followed. He affirmed that, for other treaty bodies, such lists served solely to indicate to the State party the kind of issues in respect of which its delegation might be called upon to reply during a dialogue intended to be active and specific. Nevertheless, his delegation was ready to take up the list again and to discuss, now or later on, the issues with which it had not dealt.

38. The CHAIRPERSON explained that it was usual for the delegation of the State party to supply, from the outset, information on the issues in the list and that it was not up to the Committee to reformulate those issues in the meeting room. If the representatives of Germany intended to take up the remaining issues later on, members of the Committee would now continue to ask additional questions orally.

39. Mr. RATTRAY noted that, in Germany, international obligations entered into under the Covenant were considered to be commitments by the German State to other States, although they could be implemented indirectly at the national level in so far as domestic law was in accord with international law. He would like to know whether, in such circumstances, economic, social and cultural rights and, in particular, those covered by articles 13 to 15 had

been incorporated de facto into national legislation. Had the exercise of the right to education or of the right to participate in cultural life, among others, ever given rise to proceedings before courts empowered to grant compensation if such rights were violated or did the German judicial system consider that, unlike the case of civil and political rights, there was no judicial remedy in the case of economic, social and cultural rights?

40. It seemed that the information campaign (E/1990/7/Add.12, para. 27) which had been conducted to eradicate preconceived ideas and prejudices concerning the roles that girls and women could play in society had already borne fruit, since table 6 in Germany's report showed that the gap between the number of men and the number of women having a higher educational diploma or a general baccalaureate or even an advanced vocational diploma had been substantially reduced. He asked whether the German authorities had considered measures other than the information campaign to redress the imbalance between men and women possessing educational qualifications at all levels, even in the form of affirmative action in favour of women?

41. Also on the subject of education, he inquired whether private and public education were considered to be of comparable quality in Germany and whether persons performed equally well in their professional careers regardless of whether they had studied in one or the other system. Referring to paragraph 18 of the report, concerned with the conditions of access to universities, he asked how many candidates meeting the admission requirements had been refused enrolment owing to the lack of a place.

42. According to the German delegation, it would have been necessary to ensure that teachers from the former German Democratic Republic were capable of being integrated into the educational system of a new Germany complying with generally recognized democratic principles. It had been stated that some teachers had been dismissed after their technical skills had been evaluated by the competent authorities and then by the Ministry of Education. At its 1993 session, however, the ILO Committee of Experts had heard allegations that many of the dismissals thus decided on had been linked to teachers' membership of certain political parties and not to any shortcomings in their training. In the circumstances, he had some doubts about the autonomy of the educational system in Germany and the extent to which freedom of opinion was guaranteed. He would like the German delegation to remove his doubts by providing more detailed information on the methods used and criteria followed in evaluating the abilities of teachers following reunification.

43. Mr. KOUZNETSOV asked whether it had happened that teachers from the "new Länder" had filed complaints of discrimination with the Constitutional Court or the European Court of Human Rights and, if so, whether they had won their cases. It was also quite obvious that it was no longer appropriate to teach certain subjects of a political nature in the reunified Germany, but what had happened to all the experts in scientific Marxism from the former German Democratic Republic? Had they merely been thanked for their services or had they been helped to specialize in other subjects or to be retrained?

44. Mr. GRISSA said he regretted that the report of Germany related only to the situation prior to 1990 or, in other words, to the period preceding reunification. In his opinion, the report should not be the basis for the

Committee's discussions because it did not reflect recent developments in education. He would nevertheless like the next report of Germany to provide specific information on the consequences of reunification, particularly in the field of education. He would specifically like Germany to explain how many pupils and students attended schools from primary to university level, as well as how much was spent on education in real terms, i.e. taking account of inflation. He pointed out that practically no country hesitated to cut the education budget to meet other requirements such as economic restructuring and employment. It would be useful to have indications of the exact educational situation in Germany by means, where appropriate, of comparisons with other European countries with an equivalent level of development.

45. Mr. BADAWI, referring to paragraph 63 of the report of Germany, asked how many foreigners who had been established in Germany for a generation or more had opted for German nationality. He also asked what measures had been taken by the German Government to persuade nomad families which travelled back and forth across borders to enrol their children in school. With regard to private schools, which received financial assistance from the State, it would be interesting to know whether the amount of school fees were monitored by the State. He asked what was meant in paragraph 34 of the report by the statement that financial assistance was granted only on condition that the school accepted children from all classes of society, irrespective of the income of the parents. He also asked why private universities existed in Germany.

46. Mr. ALVAREZ VITA asked how many judges from the former German Democratic Republic there were in the new Germany and what guarantees were enjoyed by citizens of the former German Democratic Republic within the current German entity. He wished to know whether freedom of education was guaranteed in every respect because there seemed to be indications of an unfortunate and paradoxical tendency to reproduce some of the former German Democratic Republic's non-democratic methods.

47. At the time of reunification, it had been indicated that the Federal Republic of Germany would succeed to the former German Democratic Republic's treaties, on condition, however, that they were not contrary to the principles of human rights. In that connection, it would be useful to know which treaties the successor State had accepted or denounced on the basis of that condition and whether it had had to deal with specific cases relating directly to articles 13 to 15 of the Covenant.

48. Noting that paragraph 40 of the report stated that the Federal Republic of Germany protected intellectual property, as indicated in its initial report (E/1982/3/Add.14, para. 65) on the protection of authors' copyright, he pointed out that, although the initial report did indicate that German law did not make any distinction based on national origin in respect of the protection of authors' copyright, it also stated that the implementation of that provision had given rise to problems that had been settled under the Bern Convention of 9 September 1886, the Universal Convention on Authors' Copyright of 6 September 1952 and the Stockholm Convention of 14 July 1967. However, the conventions in question placed restrictions on the nationality and domicile of authors and the application of rules of reciprocity, unlike the Covenant, which did not provide for any restriction. Since the texts in

question had come before the Covenant and the Vienna Convention on the Law of Treaties provided that the most recent rule prevailed, he wished to have some clarifications in that regard.

49. Mr. MARCHAN ROMERO, referring to paragraph 51 of the report, noted that Germany applied a policy of financial assistance for artists, something that appeared to indicate that it wanted to promote the exercise of cultural rights. It would nevertheless be useful to know why libraries had to pay a fee to marketing companies, what the nature of the fee was and which companies collected it.

50. Mr. CEAUSU, referring to paragraphs 22 to 25 of the report, asked what special measures had been taken by the German authorities to help immigrants of German ethnic origin from central and eastern Europe to learn the German language and familiarize themselves with contemporary German culture. He would also like to have an update of the figures referred to in paragraphs 43 et seq. and more information on some specific activities, such as public libraries, publications and radio and television programmes. With regard to the social science programme for first cycle secondary schools in the Land of North Rhine-Westphalia, as referred to in paragraph 7, he asked what was meant by "the necessary scope for personal development".

51. He had understood from what one of the members of the German delegation had said that the reunification treaty provided that German Government authorities could dismiss public officials in the territory of the former German Democratic Republic on the grounds of political opinions and activities. He nevertheless found it difficult to believe that, under a bilateral agreement, a Government could thus derogate from its obligations under the international treaties to which it was a party. If the German Government had undertaken to destroy political institutions of the totalitarian State, it would, in order to rebuild democratic institutions, have to call on the persons who had composed it, particularly the thousands of scientists from the former German Democratic Republic, who had to find a place in the new society.

52. Mrs. JIMENEZ BUTRAGUENO asked whether measures had been taken to guarantee the integration of officials of old institutions within the reunified German State and whether there were movements, particularly among pupils and students, to strengthen reunification. Referring to paragraph 35 of the report, she asked what was meant by the word "sectarios" used in the Spanish version. As far as adult education was concerned, it would be interesting to know whether there were training and refresher programmes designed to make it easier for adults to find new jobs, specially designed courses to guarantee them access to the university and activities to facilitate their participation in the cultural life of the country.

53. Mrs. IDER said that, since the report had been prepared prior to reunification, it would be useful to have comparative information on the overall situation in Germany and on that in the new Länder of the former German Democratic Republic with regard to the implementation of articles 13 to 15 of the Covenant. If there were any differences, the

measures taken to remove them should be explained. It would also be useful to have statistical data on specialized staff members, particularly in education, culture and science, who had lost their jobs in the new Länder. She wished to know whether measures had been taken to enable those persons to acquire the same level of skills as their counterparts in the western half of the country. She also asked whether diplomas awarded in the former German Democratic Republic were generally and automatically valid or whether they had to be recognized according to a particular procedure.

The meeting rose at 5.45 p.m.